

Environmental Offenses: Case-Referral Guidelines¹

The following guidelines have been established to assist regulatory agencies in making an initial case presentation to a prosecuting agency. Always communicate directly with the prosecuting agency to discuss urgent issues, such as an approaching statute-of-limitations deadline, the need for search warrants, the suspect is a flight risk, etc. Also note if any information in the referral is confidential, for example, trade secrets or grand-jury material that has not yet been made public. Let the prosecutor know about any pending inspection dates or additional reports. The suggested format for regulatory-agency referrals includes the following information.

FORMAT

1. Identify the submitting agency by letterhead, title, header, or printed report or forms.
2. Identify the type of report as a complaint, incident, or arrest/investigation report.
3. Identify the agency case, incident, or facility number.
4. Type or print in ink when making originals. All copies **must** be **legible**.
5. Keep the original report (except citations) per agency policy.
6. Submit two **legible** copies of your report, including attachments.
7. Follow your local protocol regarding digital evidence.

CONTENT

1. SUMMARY

The referral should contain a concise summary that states the major allegation(s). This summary should usually be limited to a few paragraphs because details will be included later. At a minimum, the summary should include: (1) the *date* of each alleged violation reported; (2) the *location* of each alleged violation, i.e., which city; (3) the *name* of each alleged perpetrator; and (4) the *code* and *section number* of each alleged violation (if numerous, generally state the type of violation, i.e., hazardous-waste disposal).

2. SUSPECT INFORMATION

A. Information for each *individual suspect*:

1. full name and any AKAs;
2. business and home addresses, including ZIP codes;
3. business, home, and cell phone numbers, including area codes;
4. job title and duties;
5. chain of command (who suspect reports to/who reports to him or her, and that person's responsibilities);
6. length of time employed by employer and whether currently employed by suspect;
7. date of birth;
8. driver's license, Social Security, or other identification-card number;

9. if unable to obtain above information, try to get a physical description or a description and license-plate number(s) of any vehicle(s) owned or operated by suspect;
10. previous investigations or criminal, civil, administrative, or regulatory proceedings; list the prosecuting or investigating agency and outcome;
11. the criminal history (rap sheet) in cases where the investigating agency has authorized access to this information.

B. List each *business/corporation* separately and include:

1. full name of business/corporation;
2. business structure (corporation, partnership, sole proprietorship, etc.);
3. if suspect is a subsidiary, list parent company;
4. list any other name for the company including DBA;
5. address, including ZIP code;
6. telephone numbers, including area codes;
7. nature of business and number of employees;
8. additional relevant locations the company operates, including addresses and telephone numbers;
9. if known, the company's yearly volume of business in dollars;
10. if known, agent for service of process;
11. previous investigations or criminal, civil, administrative, or regulatory proceedings; list the prosecuting or investigating agency and outcome.

3. INVESTIGATING OFFICERS

List each investigator, inspector, and regulator separately and include:

- name and badge, ID, or employee number;
- agency for whom he or she works;
- business address, including ZIP code;
- telephone numbers, including area code;
- email address.

4. ALLEGED VIOLATIONS

Specify the alleged violations including the *date* each violation occurred and the pertinent code sections, administrative regulations, ordinances, etc. for each violation date specified. If the violations are different regarding the suspects or business/corporation, list individually.

5. NARRATIVE (Full and Complete Details of Case)

A. Generally

1. This section should describe the investigation in detail, including the specifics that led you to bring the matter to a prosecuting agency's attention. A chronological narrative is often the best approach, however, your investigation may warrant another manner of presentation.

2. The statement should be detailed but must be written as if the reader has no special knowledge about the subject matter under investigation. (Describe the investigation and regulations in lay terms so a prosecutor can explain it to a judge or jury.)
3. Define and explain any scientific or technical terms and abbreviations. For example, don't say that you found 20,000 ppm of PCB. Describe what "PCB" is and its status, i.e., that it is listed in regulations as a hazardous waste. Avoid acronyms. For example, state what "ppm" stands for and that 50 ppm is the maximum level allowed by the Environmental Protection Agency. Also cite the regulation.

B. The narrative should include:

1. The elements of the offense(s) and the evidence that proves them.
2. A list of suspects, witnesses, and experts you have contacted, including names, titles, length of time with company, business and home addresses, including ZIP codes, and telephone numbers, including area codes. The list of witnesses should be presented in a separate section of the report.
3. Dates and locations of interviews, who was interviewed, who was present. Include specific details of interview. Use exact quotes and the specific question asked where ever possible. If an interview was taped, provide two copies of the audio or video tape, but keep original. State in the report that the interview was taped. Attach a copy of any transcript made of an audio or video recording. If a signed statement was obtained, so indicate, and attach a copy to your report.
4. The location and description of any physical evidence observed or collected and the disposition of the evidence.

C. Include the following if applicable:

1. Anything unusual about the witness that you observed or were told that could affect his or her availability for trial. Examples: witness lives out of county or out of state; witness is 92 years old.
2. Anything unusual that could affect witness's ability to communicate, perceive, and recollect or that shows bias. Examples: witness is seven years old; witness was fired by suspect company or is a competitor of suspect company; witness spoke through an interpreter (indicate language). Denote whether witness indicated a willingness to testify at trial.
3. Describe the facility, including the type of business and environmental issues associated with its operation such as hazardous waste generated or pollutants released as a result of the manufacturing process.
4. Include in your statement any contacts you have had with the suspects. Indicate whether any warnings, citations, etc. were issued, including the dates. Note the response, or lack of response, from the suspects.

5. Include in your statement the manner in which access was gained to the location (e.g., search warrant, consent, inspection authorized by statute, etc.).

6. ADDITIONAL ATTACHMENTS

When referencing documents obtained during the course of the investigation, reference them as attachments. For example, Attachment 1. Identify each attachment numerically under the ATTACHMENTS section of this report. Please list and attach the following to your reports:

A. Testing results

1. Lab reports, if any were written. The reports should include who took the sample, when and where, the purpose of the test, the results, and what the results mean.
2. Indicate any further tests that are being performed and the approximate date when they will be ready. Identify who took the samples, when and where, the purpose of the tests, and what the results will prove or disprove.
3. Indicate whether any further samples or tests are planned and why.

B. Physical evidence or property reports, including chain-of-custody sheets

C. Articles of Incorporation, DBAs, fictitious-business-name statements, licenses, permits, certificates of non-licensure for relevant dates, etc.

Provide details in body of report, e.g., specific license required, license expired.

D. Maps, photos, charts, etc.

A diagram that shows where samples or photos were taken and a photo log that clearly indicates what the photos purport to represent are very helpful and important.

E. Previous warnings, abatement orders, or citations with proof of service, e.g., certified return receipt, declaration of service, etc.

F. Copies of local ordinances, regulations, or specific orders referenced

G. Criminal histories for all suspects (law-enforcement agencies only)

H. Specific scientific or technical articles that relate to the subject matter

I. Background and credential material on experts you have consulted

J. Copies of all documents received from complaining witnesses and copies of their complaints filed with your office

K. Your handwritten investigation notes, unless your agency has a policy of not retaining them upon completion of the written report

L. Relevant correspondence, email, and other communications with suspect

M. Any potentially exculpatory evidence

7. CONCLUSION OR SUMMATION

If you have not already included this, you may wish to summarize your findings or recommendations, especially if the report is a long one. Please do *not* make any legal conclusions, i.e., “This case should be filed civilly.”

8. MEDIA ISSUES

If you have contacted or been contacted by a media representative about your case or its submission to a prosecutor’s office, contact that office concerning its policy regarding statements to the media. It is some prosecutors’ policy to refuse to confirm delivery or receipt of a case, or any discussions the prosecutor has had with a law-enforcement or regulatory agency about the case until after an action is filed in court. You should seriously consider the wisdom of disclosure at this stage given the potential for: (1) destruction or dissipation of evidence; (2) the compromise of the safety and effectiveness of investigators, informants, and other case components; (3) the possibility that witnesses and suspects will “lawyer up”; and (4) exposure to civil liability for alleged defamation, trade libel, interference with economic advantage, and more.

9. INVESTIGATION COSTS

Include as a separate attachment.

WHEN IN DOUBT ...

Call the prosecutor’s office with questions.

ENDNOTE

1. A subcommittee created at CDAA’s Advanced Topics in Environmental Enforcement seminar in June 2003 drafted these guidelines. Subcommittee members included Chairman John Fioretta (*Santa Clara County District Attorney’s Office*), Kathryn Lange (*San Diego City Attorney’s Office*), Kelly Sakir (*Los Angeles County District Attorney’s Office*), Tony Cordero (*formerly with the Department of Toxic Substances and Control*), Mary Locke (*Department of Toxic Substances and Control*), and Erica Martin (*Cal/EPA*). Richard Sherwood (*Department of Toxic Substances and Control*) also helped formulate these recommendations. CDAA would like to extend special thanks to John Fioretta, Kathryn Lange, and Kelly Sakir for heading up this project.

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